

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DICKEY'S BARBECUE RESTAURANTS, INC. §
Plaintiff, §

CIVIL ACTION No. 3:10-CV-0300-P

vs. §

LIRA, LLC and LUIGI MANGIONE §

Defendants. §

FINAL AGREED JUDGMENT

On March 26, 2010, the Clerk of this Court entered its Clerk's Entry of Default in the above styled and numbered cause against Defendants Lira, LLC and Luigi Mangione.

On April 22, 2010, the Court entered an interlocutory Order granting (1) Motion for Default Judgment on Liability Issues (2) Motion for Entry of Permanent Injunction (3) Motion for Civil Contempt and Sanctions and (4) Motion to Correct Record Pursuant to FRCP 60(a) in the above styled and numbered cause. The Court awarded Plaintiff an interlocutory default judgment on liability issues only on its claims for trademark infringement-Lanham Act, breach of covenant not to compete, misappropriation of trade secrets, suit on sworn account against Defendant Lira, LLC, breach of contract against Defendant Lira, LLC, and breach of guaranty against Defendant Luigi Mangione. The Court retained for future consideration and determination, Plaintiff Dickey's Barbecue Restaurants, Inc.'s claims for the amount and extent of damages and its suit for an accounting. The Court further ordered an accounting for damages and profits arising from Defendants' infringement, false designation of origin, unfair competition

and breach of the Franchise Agreement, including all profits realized from the sale of the food, food products and goods at the terminated franchise location or otherwise;

Defendants failed to appear or respond to an Order to Show Cause signed by the Court on June 3, 2010. An Order to Show Cause and for Issuance of an Attachment was signed by the Court on June 24, 2010. On June 24, 2010, a Warrant for Arrest in a Civil Action was issued for Luigi Mangione. Subsequently, Defendants have made an appearance in this action and have provided Plaintiffs with certain documents responsive to the accounting ordered by the Court.

The parties have now reached an agreement on the issues retained for future consideration and determination by the Court's Order entered April 22, 2010 and have agreed to the entry of a final agreed judgment resolving all remaining issues and causes of action asserted by the parties herein as follows:

ORDERED that Plaintiff Dickey's Barbecue Restaurants, Inc. does have and recover from Defendants Lira, LLC and Luigi Mangione, jointly and severally, the sum of \$25,613.11 plus post judgment interest on such judgment amount at the agreed rate of 4% per annum until the judgment is paid, plus attorneys fees in the amount of \$76,904.77 together with interest thereon at the agreed rate of 4% per annum until this Judgment is paid, all costs to be taxed against Defendants Lira, LLC and Luigi Mangione, for all of which let execution issue.

IT IS FURTHER ORDERED that Plaintiff's Motion for Entry of Permanent Injunction is hereby made final by granting Plaintiff's Motion for Entry of Permanent Injunction, restraining and enjoining Defendants Lira, L.L.C. and Luigi Mangione, their officers, agents, servants, employees, attorneys, privies, successors, assigns and all claiming any rights through them and those in active concert or participation with them from:

1. Operating the restaurant located at 2845 E. Overland Rd., Suite 190, Meridian, Idaho 83642 and shall not thereafter directly or indirectly, represent to the public or hold themselves out as a present or former franchisee of Dickey's Barbecue Restaurants, Inc.

2. Using, in any manner, any confidential methods, procedures, techniques, and trade secrets, associated with the System, the trademarks, the Proprietary Marks, and all other distinctive forms, slogans, signs, symbols, devices associated with the System, as set forth in the Manuals including all signs, advertising materials, displays, stationary, forms, and other articles which display the trademarks, the Proprietary Marks and trade secrets as those terms are defined in the Franchise Agreement between the parties which is the subject of this cause of action (the "Franchise Agreement").

3. Using, disclosing, advertising, promotion or display of the trademarks, Proprietary Marks and trade secrets of Dickey's Barbecue Restaurants, Inc., or its System as such terms are defined in the Franchise Agreement.

4. Offering for sale, sale or distribution of food, food products and catering services in any manner by falsely designating the origin of the Defendants' products in a manner that is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendants with, or to Plaintiff Dickey's Barbecue Restaurants, Inc. or its System.

5. Passing off or otherwise representing to the public in any way that the products sold by Defendants emanate from or are related in source or sponsorship or any other way to Plaintiff Dickey's Barbecue Restaurants, Inc.

6. Infringing on Plaintiff Dickey's Barbecue Restaurants, Inc. common-law rights by using, advertising, promotion, display, distribution, offering for sale, and sale of any product

copying Plaintiff's System, trademarks, Proprietary Marks and trade secrets.

7. Injuring Plaintiff Dickey's Barbecue Restaurants, Inc.'s business reputation or diluting the distinctive quality of Dickey's Barbecue Restaurants, Inc.'s System, trademarks, Proprietary Marks and trade secrets.

8. Engaging in deceptive trade practices or acts in the conduct of their business by using, advertising, promotion, display, distribution, offering for sale, and sale of food, food products, and catering services at any restaurant or otherwise, copying the Dickey's Barbecue Restaurants, Inc.'s System, trademarks, Proprietary Marks and trade secrets as such terms are defined in the Franchise Agreement.

9. Violating the confidentiality and non-compete agreements set forth in the Franchise Agreement including, without limitation, by owning, maintaining, operating, engaging in or having any financial or beneficial interest in, advising, assisting or making loans to, any business which is the same as or similar to a Dickey's Barbecue Pit restaurant, including, but not limited to, any food business which offers barbecue-style food as a primary menu item which business is, or is intended to be, located within a five (5) mile radius of 2845 E. Overland Rd., Suite 190, Meridian, Idaho 83642 for a period of two (2) years following the termination of the Franchise Agreement on January 19, 2010;

IT IS FURTHER ORDERED that that all manuals, signs, sign boards, electric signs, menus, prints, displays, packages, plates, cups, décor items, photographs, wrappers, receptacles, or advertisements or other items constituting a part of the Dickey's System in the possession of Defendants Lira, LLC and Luigi Mangione bearing the infringing Trademarks, Proprietary Marks, Trade Secrets or constituting part of the System must be delivered up to the Plaintiff

within thirty (30) days of this Order;

IT IS FURTHER ORDERED that Defendants shall be required to immediately notify Plaintiff if Defendants, or any of them, become aware of any former managers, or employees of Defendants becoming engaged in the manufacture and/or sale of barbecue on a commercial basis, including without limitation, providing consultation services or being employed by any entity engaged in the sale of smoked or barbecued food.

IT IS FURTHER ORDERED that the surety bond posted with the Clerk of the Court by Dickey's Barbecue Restaurants, Inc. on March 9, 2010 in the sum of \$5,000.00 is hereby released in favor of Plaintiff Dickey's Barbecue Restaurants, Inc.;

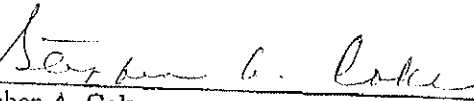
SO ORDERED.

SIGNED this the 14th day of September, 2010.


UNITED STATES DISTRICT JUDGE

AGREED:

WESNER COKE & CLYMER, P.C.

By: 
Stephen A. Coke

Texas State Bar No. 04519000

Richard W. Winn

Texas State Bar No. 21779700

Three Galleria Tower - Suite 800

13155 Noel Road

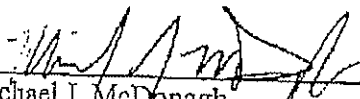
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ATTORNEYS FOR PLAINTIFF

DICKEY'S BARBECUE RESTAURANTS, INC.


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Boise, Idaho 83713

Telephone: 208-631-4454

ATTORNEY FOR DEFENDANTS

LIRA, LLC and LUGI MANGIONE

FINAL AGREED JUDGMENT

Certificate of Service

On Sep 7, 2010 I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

s/ Stephen A. Coke